



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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December 23, 2015

Evan Lewis
Chief, Environmental and Cultural Resources Branch
U.S. Army Corps of Engineers
PO Box 3755
Seattle, WA 98124

**RE: Coastal Zone Consistency Conditional Concurrence for Dykstra Levee
Rehabilitation Project, Green River, Auburn, King County, Washington**

Dear Mr. Lewis:

On September 28, 2015, U.S. Army Corps of Engineers, Seattle District (Corps) submitted a Consistency Determination with the Washington State Coastal Zone Management Program (CZMP) for rehabilitation of the Dykstra Levee at three sites. On November 16, 2015, the Corps and the Department of Ecology (Ecology) agreed to extend the CZM date to December 23, 2015. At this time, Ecology is issuing a conditional concurrence pursuant to 15 C.F.R. §930.4 for the Dykstra Levee project for the following reasons:

Pursuant to the Clean Water Act (CWA) the State of Washington establishes standards and criteria to administer its responsibility under the CWA. Those standards and criteria have been incorporated as enforceable policies into Washington's federally-approved CZMP. Washington has established total maximum daily loads (TMDLs) for pollutants in priority waters and developed plans to address the TMDLs. The Green River Temperature TMDL (Ecology 2011) describes the amount of increased effective shade required to meet state water quality standards over the 80-kilometer mainstem of the Green River. The Dykstra reach (approximately 50 kilometers below Howard Hansen Dam) lacks effective shade such that state water quality temperature standards are not met in this reach of the Green River. The Green River Temperature TMDL specifies the shade deficit is 33 percent in this reach of the river, and the average required decrease in solar loading is 85 watts per square meter (page 75). The proposed levee repairs on the Dykstra reach will further damage river shading (for at least 25-40 years) and is expected to worsen the Green River water temperature impairment.

System potential tree height for this reach of the Green River is a 32-meter tree height and system potential buffer width is a 45-meter width. Since system potential conditions are precluded by constraints at the three Dykstra project sites at this time, the interruption in shade must be mitigated by providing additional shade in the same river reach. In addition, the proposed one (1) year of monitoring for tree survival with 100 percent survivability is insufficient to ensure that the trees survive and thrive in order to provide the necessary shade anticipated for this project. The temporal loss of shade for this project is not adequately



accounted and mitigated for in the Corps proposal, as planted trees will only provide shade 25-40 years after trees mature.

The Green River Temperature TMDL encourages riparian planting projects and states that “methods to provide shade in the areas with the U.S. Army Corps of Engineers (COE)-certified levees must be found to make this TMDL successful.”

These and many related concerns were identified during the more than two years of effort by the Advisory Council that worked on the Green River System-Wide Improvement Framework. This Corps-sanctioned SWIF process resulted in the Advisory Council and the King County Flood Control District Executive Committee approving the vegetation management goal to “develop shoreline and levee vegetation management recommendations to further the goals of the Endangered Species Act, Clean Water Act and Corps PL84-99 standards.”

Based on the above, in order for the state to concur that the activities covered under this Consistency Determination are consistent with the enforceable policies of the state CZMP, and specifically the Clean Water Act, the Green River Temperature TMDL, and state water quality standards, the Corps shall meet the following conditions:

- A. Plant at or near Site 1 an additional 28 large trees over a 460-foot length of south bank riparian shoreline to offset temporal loss of shade and project site planting constraints.
- B. Plant at or near Site 2 an additional 84 large trees over a 1,365-foot length of left bank (east-facing) riparian shoreline to offset temporal loss of shade and project site planting constraints.
- C. Provide adequate plant survivability assurance to include:
 - i. Monitoring: The condition of riparian plantings shall be recorded in Years 1, 3, and 5. Monitoring reports should document plant survival and vigor and include representative photos from permanent locations. Copies of all monitoring reports shall be submitted to Ecology.
 - ii. Performance Standards: The project shall meet the following performance standard: Survival of plantings after the first year: 100 percent; survival throughout all subsequent years: 80 percent. Percent cover shall achieve 30 percent cover by Year 3 and 75 percent cover by Year 5. Native "volunteer" vegetation may be included in determining the percent cover. Percent cover may be substituted for survival after Year 3 if individual plants are difficult to locate.

If this performance standard is not met, then additional planting may be required.

The plantings specified in conditions A and B shall be in addition to the plantings already included in the Corps proposal. All submittals required above should reference this Consistency Determination and be sent to: 401/CZM Federal Permit Coordinator, Shorelands and Environmental Assistance Program, PO Box 47600, Lacey, WA 98504 or by email to fednotification@ecy.wa.gov.

In the event the above conditions are not met, all parties shall treat Ecology's conditional concurrence letter as an objection and notify, pursuant to 930.63(e), applicants, persons, and applicant agencies of the opportunity to appeal the state agency's objection to the Secretary of

Commerce within 30 days after receipt of Ecology's conditional concurrence/objection or 30 days after receiving notice from the federal agency that the application will not be approved as amended by Ecology's conditions.

If you have any questions regarding Ecology's consistency determination please contact Rebekah Padgett at (425) 649-7129.

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do all of the following within 30 days of the date of receipt of this Order:

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) Email is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel RD SW STE 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

Sincerely,



Erik Stockdale, Section Manager
Shorelands and Environmental Assistance Program
Northwest Regional Office

ES:rrp:ap

cc: Larry Fisher, Washington Department of Fish and Wildlife
Vivian Roach, Washington Department of Natural Resources
Chris Anderson, City of Auburn

e-cc: Evan Lewis, U.S. Army Corps of Engineers evan.r.lewis@usace.army.mil
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